REMARKS

Applicants appreciate the consideration of the present application afforded by the Examiner. Claims 1-8 were pending and claims 9-17 were withdrawn from consideration prior to the Office Action. Claims 18-27 have been added through this Reply. Therefore, claims 1-8 and 18-27 are pending. Claims 1 and 5 are independent. Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

Allowable Subject Matter

Applicants appreciate that claims 3, 4, 7, and 8 are indicated to define allowable subject matter.

Claim Rejections - 35 U.S.C. §102

Claims 1, 2, 5, and 6 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 6,204,881 to Ikeda et al. ("Ikeda"). Applicants submit the Examiner has failed to establish a *prima facie* case of anticipation and traverse the rejection.

In order to establish a *prima facie* case of anticipation under 35 U.S.C. §102, the cited reference must teach or suggest each and every element in the claims. *See M.P.E.P. §2131; M.P.E.P. §706.02.* Accordingly, if the cited reference fails to teach or suggest one or more claimed elements, the rejection is improper and must be withdrawn.

Independent claims 1 and 5 recite a method and means for image-combining high output and low output image data to form combined image data; and multiplying the combined data of the high output image data and the low output image data by a total gain that depends on a scene. Applicants respectfully submit that Ikeda fails to disclose at least these limitations of the claim.

The Examiner cites Figs. 32-33, col. 26, line 27 – col. 27, line 34, and col. 28, lines 6-10 as allegedly disclosing the features of the independent claims. However, the cited passages recite that image data I and image data II correspond to images sensed with different exposure amounts, and that gain control processing is individually

performed on image data I and image data II in step S12 such that the image level of image data II corresponds with that of image data I.

The Examiner, in responding to Applicants' previous arguments, states that he "believes that the fact that both image data I and image data II are multiplied by a total gain (in gain control processing) and are then combined sufficiently discloses that a combined data for the high output image data (image data I) and the low output image data (image data II) are multiplied by a total gain that depends on a scene." Furthermore, the Examiner states that, in Ikeda, "a combined data... has been multiplied by a total gain". *See Office Action, page 2, paragraph 2.* Applicants disagree and submit that the Examiner is perhaps mischaracterizing a total gain as being the sum of the gains individually applied to image data I and image data II.

In Ikeda, the gain control processing is performed <u>prior</u> to image data I and image data II being combined (see col. 27, lines 24-34). Furthermore, Ikeda states that "gain control processing is performed so that the image level of the image data II ...corresponds with that of the image data I" and that "the image data II sensed with exposure three times as much as that of the image data I may be multiplied by 1/3". *See Ikeda, col. 27, lines 24- 29.* Then, <u>after</u> the gain control processing has been completed, image addition processing of image data I and image data II is performed in step S13 (see col. 28, lines 6-10).

Clearly, Ikeda discloses that image data I and image data II are gain-controlled such that their image levels correspond to each other; thus, image data I and/or image data II are multiplied by different amounts of gain.

In direct contrast, independent claims 1 and 5 require the step of "<u>multiplying a combined data</u> for the high output image data and the low output image data <u>by a total gain</u> that depends on a scene." In other words, high output image data and low output image data are <u>first</u> combined and <u>then</u> multiplied by a total gain that depends on a scene. This achieves a different result than if individual gains were first applied to image data I and image data II and then the image data I and II were combined.

Therefore, at least because Ikeda fails to teach or suggest each and every claimed element, independent claims 1 and 5 are distinguishable from the prior art. Claims 2-4

and 6-8 depend from claims 1 and 5, directly or independently. Therefore, for at least the reasons stated with respect to claims 1 and 5, claims 2-4 and 6-8 are also distinguishable from Ikeda.

Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 102(b) be withdrawn.

New Claims

New claims 18-27 have been added through this Amendment, and are considered to be in condition for allowance at least due to their dependence upon independent claims 1 and 5. No new matter has been entered.

CONCLUSION

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Notice of same is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John R. Sanders, Reg. No. 60,166 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

By_____

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